

## JUDGMENT OF THE COURT (Third Chamber)

27 February 2014 (\*)

(Social policy – Directive 96/34/EC – Framework agreement on parental leave – Clauses 1 and 2.4 – Part-time parental leave – Dismissal of a worker without compelling or sufficient reason – Fixed-sum protective award on account of the taking of parental leave – Method of calculating the amount of award)

In Case C-588/12,

REQUEST for a preliminary ruling under Article 267 TFEU, from the arbeidshof te Antwerpen (Belgium), made by decision of 10 December 2012, received at the Court on 14 December 2012, in the proceedings

**Lyreco Belgium NV**

v

**Sophie Rogiers,**

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, C.G. Fernlund, A. Ó Caoimh (Rapporteur), C. Toader and E. Jarašiūnas, Judges,

Advocate General: N. Jääskinen,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Lyreco Belgium NV, by E. Lievens, advocaat,
- the Belgian Government, by M. Jacobs and L. Van den Broeck, acting as Agents,
- the European Commission, by C. Gheorghiu and M. van Beek, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

### Judgment

1 This request for a preliminary ruling concerns the interpretation of clauses 1 and 2.4 of the framework agreement on parental leave concluded on 14 December 1995 ('the Framework

Agreement'), which is set out in the annex to Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ 1996 L 145, p. 4) as amended by Council Directive 97/75/EC of 15 December 1997 (OJ 1998 L 10, p. 24) ('Directive 96/34').

- 2 The request has been made in proceedings between Lyreco Belgium NV ('Lyreco') and Ms Rogiers concerning the calculation of the fixed-sum protective award payable to her because of her unlawful dismissal during part-time parental leave.

## Legal context

### *European Union law*

- 3 The first paragraph of the preamble to the Framework Agreement states:

'The enclosed framework agreement represents an undertaking by UNICE [Union of Industrial and Employers' Confederations of Europe], CEEP [European Centre of Employers and Enterprises] and the ETUC [European Trade Union Confederation] to set out minimum requirements on parental leave ..., as an important means of reconciling work and family life and promoting equal opportunities and treatment between men and women'.

- 4 Under paragraphs 4 to 6 of the General Considerations of the Framework Agreement:

'4. Whereas the Community Charter of Fundamental Social Rights [of Workers, adopted at the meeting of the European Council in Strasbourg on 9 December 1989] stipulates at point 16 dealing with equal treatment that measures should be developed to enable men and women to reconcile their occupational and family obligations;

5. Whereas the Council Resolution of 6 December 1994 recognizes that an effective policy of equal opportunities presupposes an integrated overall strategy allowing for better organization of working hours and greater flexibility, and for an easier return to working life, and notes the important role of the two sides of industry in this area and in offering both men and women an opportunity to reconcile their work responsibilities with family obligations;

6. Whereas measures to reconcile work and family life should encourage the introduction of new flexible ways of organizing work and time which are better suited to the changing needs of society and which should take the needs of both undertakings and workers into account.'

- 5 Clause 1 of the Framework Agreement provides:

'1. This agreement lays down minimum requirements designed to facilitate the reconciliation of parental and professional responsibilities for working parents.

2. This agreement applies to all workers, men and women, who have an employment contract or employment relationship as defined by the law, collective agreements or practices in force in each Member State.'

- 6 Clause 2 of the Framework Agreement, entitled 'Parental leave', is worded as follows:

'1. This agreement grants, subject to clause 2.2, men and women workers an individual right to parental leave on the grounds of the birth or adoption of a child to enable them to take care of

that child, for at least three months, until a given age up to 8 years to be defined by Member States and/or management and labour.

...

3. The conditions of access and detailed rules for applying parental leave shall be defined by law and/or collective agreement in the Member States, as long as the minimum requirements of this agreement are respected. Member States and/or management and labour may, in particular:

(a) decide whether parental leave is granted on a full-time or part-time basis, in a piecemeal way or in the form of a time-credit system;

(b) make entitlement to parental leave subject to a period of work qualification and/or a length of service qualification which shall not exceed one year;

...

4. In order to ensure that workers can exercise their right to parental leave, Member States and/or management and labour shall take the necessary measures to protect workers against dismissal on the grounds of an application for, or the taking of, parental leave in accordance with national law, collective agreements or practices.

5. At the end of parental leave, workers shall have the right to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract or employment relationship.

6. Rights acquired or in the process of being acquired by the worker on the date on which parental leave starts shall be maintained as they stand until the end of parental leave. At the end of parental leave, these rights, including any changes arising from national law, collective agreements or practice, shall apply.

...‘

#### *Belgian law*

7 In Belgium, Directive 96/34 was transposed with regard to employees working in the private sector by the Royal Decree on the introduction of a right to parental leave in the form of a career break (koninklijk besluit tot invoering van een recht op ouderschapsverlof in het kader van de onderbreking van de beroepsloopbaan) of 29 October 1997 (*Belgisch Staatsblad*, 7 November 1997, p. 29930), in its version applicable to the main proceedings (‘the Royal Decree of 1997’), and by some provisions of Chapter IV, Section 5 – entitled ‘Career break’ – of the Law on financial stabilisation containing social provisions (herstelwet houdende sociale bepalingen), of 22 January 1985 (*Belgisch Staatsblad*, 24 January 1985, p. 6999, ‘Law on financial stabilisation’).

8 Pursuant to Article 2(1) of the Royal Decree of 1997, read in conjunction with Articles 100 and 102 of the Law on financial stabilisation, the worker has the right to take parental leave in accordance with one of the following options:

– to suspend performance of his employment contract for a period of three months (Article 100 of that law);

– or, to continue his employment on a part-time basis for a period of 6 or 15 months with a reduction in working hours of half or one fifth, respectively, of the normal full-time working hours (Article 102 of the same law).

9 Article 6(1) of that Royal Decree provides that the worker wishing to exercise his right to parental leave must notify his employer at least two months and at most three months in advance. That period may be reduced by mutual consent between the employer and the worker.

10 Under Article 4 of the Royal Decree of 1997, the worker may claim a right to parental leave only if, during the period of 15 months preceding the written communication to the employer, he was bound to his employer by an employment contract for at least 12 months.

11 Article 101 of the Law on financial stabilisation lays down a system of protection against dismissal which is applicable, inter alia, to parental leave. That article is worded as follows:

‘If performance of the employment contract is suspended ... or if working hours are reduced pursuant to Article 102(1) ..., the employer may not take any action to terminate unilaterally the employment relationship save for compelling reason as provided for in Article 35 of the Law ... on employment contracts [(wet betreffende de arbeidsovereenkomsten), of 3 July 1978, (*Belgisch Staatsblad*, 22 August 1978, p. 9277, “the 1978 Law”)], or for sufficient reason.

...

...

A sufficient reason is one that has been acknowledged as such by the court and whose nature and origin are unconnected with the suspension referred to in Articles 100 and 100a or the reduction referred to in Articles 102 and 102a.

...

The employer who, despite the provisions of the first paragraph, terminates the employment contract when there is no compelling or sufficient reason to do so, shall pay the worker fixed-sum [protective] compensation equal to six months’ salary, without prejudice to any compensation payable to the worker for breach of the employment contract’.

12 It is apparent from the documents before the Court that the latter compensation includes, in particular, ‘payment in lieu of notice’, provided for in Article 39 of the 1978 Law. That article states inter alia:

‘In the case of a contract of indefinite duration, the party terminating the contract without compelling reason or without observing the period of notice laid down in Articles 59, 82, 83, 84 and 115 [of the 1978 Law] is required to pay the other party compensation equal to the current salary for the duration of the period of notice or for the period of notice remaining.

...

The compensation shall include not only the current salary, but also the benefits acquired under the contract.’

13 Article 103 of the Law on financial stabilisation provides:

‘In the event of unilateral termination of the employment contract by the employer, the notice period applicable in respect of a worker who has reduced his working hours in accordance with Article 102 (and 102a) shall be calculated as if the worker had not reduced his hours. The length of that notice period shall also be taken into account in determining the compensation [for dismissal] referred to in Article 39 of the [1978 Law].’

- 14 It is also apparent from the documents before the Court that, following the judgment of the Court of 22 October 2009 in Case C-116/08 *Meerts* ECR I-10063, Article 105(3) of the Law on financial stabilisation has been amended and is now worded as follows:

‘When an employment contract is terminated at a time when the worker is availing himself of arrangements for reduced working hours under parental leave taken pursuant to this section, “current salary” for the purposes of Article 39 of the [1978 Law] shall mean the salary to which the worker would have been entitled under his employment contract if he had not reduced his working hours.’

- 15 According to the referring court, no amendment was made to ‘the regulation of [fixed-sum] protective awards’.

### **The dispute in the main proceedings and the question referred for a preliminary ruling**

- 16 From 3 January 2005, Ms Rogiers worked as a full-time employee of Lyreco under an employment contract of indefinite duration.

- 17 From 9 January to 26 April 2009, performance of the contract was suspended owing to Ms Rogiers’ maternity leave.

- 18 As from 27 April 2009, Ms Rogiers should have resumed work on a half-time basis under parental leave which she had been granted for a period of four months.

- 19 By registered letter dated 27 April 2009, Lyreco terminated Ms Rogiers’ employment contract with a notice period of five months taking effect on 1 May 2009. According to the referring court, her employment contract ended on 31 August 2009.

- 20 Ms Rogiers brought an action against her dismissal before the arbeidsrechtbank te Antwerpen (Labour Court, Antwerp), disputing the grounds of dismissal provided by Lyreco, namely: in essence, on the one hand, that it was impossible to employ Ms Rogiers, given the lack of work and, on the other, her refusal to accept the other position offered her when the position of Recruitment Manager she had occupied before taking parental leave was done away with.

- 21 By judgment of 21 September 2011, that court ordered Lyreco to pay a fixed-sum protective award equal to six months’ salary provided for in Article 101 of the Law on financial stabilisation because of the unilateral termination of Ms Rogiers’ employment contract, without compelling or sufficient reason, during her parental leave. According to that judgment, the amount of that award had to be calculated on the basis of the salary paid to Ms Rogiers at the date of her dismissal, namely: 27 April 2009, that is to say, the salary corresponding to the half-time hours she worked on account of the part-time parental leave to which she was entitled.

- 22 On 14 December 2011, Lyreco lodged an appeal against that judgment before the arbeidshof te Antwerpen (Higher Labour Court, Antwerp). Ms Rogiers brought a cross-appeal before that same court seeking to have the amount of the fixed-sum protective award that Lyreco had been ordered to

pay her calculated on the basis of the salary for full-time working hours.

23 By judgment of 10 December 2012, the arbeidshof te Antwerpen confirmed that Ms Rogiers had been dismissed without compelling or sufficient reason during her parental leave and that, as a result, she was entitled to payment of a fixed-sum protective award equal to six months' salary.

24 That court also endorsed the observations in the opinion submitted to it by the Public Prosecution Service, which, inter alia, described the system of calculation of the award due to Ms Rogiers as applied in the judgment of 21 September 2011 as 'absurd', since, according to the logic followed in that judgment, taking fulltime parental leave, as it entails a reduction in working hours of 100%, would have to lead to the fixed-sum protective award being calculated on the basis of no salary at all, which would make no sense. None the less, the referring court considers that the grounds set out in *Meerts* relating to payment in lieu of notice provided for in Article 39 of the 1978 Law cannot necessarily be applied to the fixed-sum protective award at issue in the case before it.

25 In those circumstances, the arbeidshof te Antwerpen decided to stay proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is it contrary to clauses 1 and 2.4, of the framework agreement ... for the [fixedsum] protective award that must be paid to the worker who was bound to his employer by a full-time employment contract of indefinite duration, and whose employment contract is terminated unilaterally by that employer without compelling or sufficient reason during a period in which working hours are reduced, on account of the taking of parental leave, by 20% or 50%, to be calculated with reference to the salary payable during that period of reduction, when the same worker would be entitled to a protective award calculated by reference to the full-time salary if he had reduced his working hours by 100%?'

26 In response to a request for clarification made by the Court to the arbeidshof te Antwerpen pursuant to Article 101 of its Rules of Procedure, the referring court stated that the judgment delivered by the Court of Cassation on 15 February 2010, to which the Belgian Government referred in its written observations submitted in these proceedings, has no bearing on dealing with the request for a preliminary ruling, since that judgment does not relate to the fixed-sum protective award provided for in Article 101 of the Law on financial stabilisation.

### **Consideration of the question referred**

27 As a preliminary point, it must be noted that clause 1.2 of the Framework Agreement, mentioned by the referring court in its question, merely defines the scope of that framework agreement, by providing that it applies to all workers who have an employment contract or employment relationship as defined by the law, collective agreements or practices in force in each Member State.

28 It is not disputed that such was the case of a person in Ms Rogiers' situation in the main proceedings, with the result that her situation falls within the ambit of the Framework Agreement.

29 In those circumstances, it must be considered that, by its question, the referring court asks, in essence, whether on a proper construction of clause 2.4 of the Framework Agreement, it is contrary to that provision for the fixed-sum protective award payable to a worker on part-time parental leave, when the employer unilaterally terminates, without compelling or sufficient reason, that worker's fulltime contract of indefinite duration, to be determined on the basis of the reduced salary earned by that worker at the date of his dismissal.

- 30 As is apparent from the first paragraph in the preamble to the Framework Agreement, from paragraphs 4 and 5 of its general considerations and from clause 1.1 thereof, the Framework Agreement constitutes an undertaking by the two sides of industry to introduce, through minimum requirements, measures to offer both men and women an opportunity to reconcile their work responsibilities with family obligations (see, to that effect, *Meerts*, paragraph 35; Case C-149/10 *Chatzi* [2010] ECR I-8489, paragraph 56; and Case C-7/12 *Riežniece* [2013] ECR, paragraph 31).
- 31 It is also clear from paragraph 6 of the general considerations of the Framework Agreement that measures to reconcile work and family life should encourage the introduction in the Member States of new flexible ways of organising work and time which are better suited to the changing needs of society, taking the needs of both undertakings and workers into account (*Meerts*, paragraph 36).
- 32 The Framework Agreement is thus in line with the fundamental social rights enshrined in paragraph 16 of the Community Charter of the Fundamental Social Rights of Workers on equal treatment for men and women, to which the Framework Agreement refers, inter alia, at paragraph 4 of its general considerations, and which is also mentioned in the first paragraph of Article 151 TFEU, social rights which are associated with the improvement of living and working conditions and with the existence of proper social protection for workers, in the present case those who have applied for or taken parental leave (see, to that effect, *Meerts*, paragraph 37; Case C-486/08 *Zentralbetriebsrat der Landeskrankenhäuser Tirols* [2010] ECR I-3527, paragraph 52; and *Chatzi*, paragraph 36).
- 33 To this end, the Framework Agreement, in accordance with clause 2.1 thereof, enables new parents to take a break from work to devote themselves to their family responsibilities, whilst giving them the assurance, set out in clause 2.5, that they will be, as a rule, entitled to return to the same job at the end of the leave (see *Chatzi*, paragraph 57, and *Riežniece*, paragraph 32).
- 34 In order to ensure that workers can actually exercise that right to parental leave provided for by the Framework Agreement, clause 2.4 thereof requires Member States and/or management and labour to take the necessary measures to protect workers against dismissal on the grounds of an application for, or the taking of, parental leave in accordance with national law, collective agreements or practices.
- 35 As is apparent from its wording, that provision seeks to protect workers against dismissal on the grounds of an application for, or the taking of, parental leave (see *Meerts*, paragraph 33, and *Riežniece*, paragraph 34).
- 36 Having regard to the objective pursued by the Framework Agreement, as recalled in paragraphs 30 and 31 above, to offer both men and women an opportunity to reconcile their work responsibilities with family obligations, clause 2.4 must be interpreted as articulating a particularly important European Union social right and it may not, therefore, be interpreted restrictively (see, to that effect, *Meerts*, paragraph 42 and the case-law cited, and *Zentralbetriebsrat der Landeskrankenhäuser Tirols*, paragraph 54).
- 37 National legislation that provides, like the legislation at issue in the main proceedings, when an employer unilaterally terminates, without compelling or sufficient reason, a worker's full-time contract of indefinite duration while the worker is taking parental leave, that the worker is to be granted, in addition to the compensation due for breach of contract, a fixed-sum protective award equivalent to six months' salary, may be classified as 'measures to protect workers against dismissal on the grounds of an application for, or the taking of, parental leave,' within the meaning of clause 2.4 of the Framework Agreement.

- 38 It must, however, be found that such a protective measure would lose a great part of its effectiveness if, in a situation in which a worker employed for an indefinite duration on a full-time basis, like Ms Rogiers in the main proceedings, is unlawfully dismissed during part-time parental leave, the fixed-sum protective award to which that worker is entitled were to be determined not on the basis of the salary earned under the full-time employment contract but on the basis of the reduced salary earned during the part-time parental leave. Such a method of determining the amount of that fixed-sum award would be likely not to have a deterrent effect sufficient to prevent the dismissal of workers on part-time parental leave (see, to that effect, *Meerts*, paragraphs 46 and 47).
- 39 Such a result would lead, in breach of one of the objectives of the Framework Agreement, referred to at paragraph 32 above, of ensuring proper social protection for workers who have taken parental leave, to increased job insecurity for workers who have chosen to take part-time parental leave, by rendering null in part the protective system established by clause 2.4 of the Framework Agreement, and thus seriously affecting a particularly important principle of Union social law.
- 40 Furthermore, such a method of determining the amount of the fixed-sum protective award, because it is likely to dissuade some workers from taking parental leave, would be liable too to thwart the aim of the Framework Agreement, in that the latter seeks, as was recalled at paragraph 30 above, to make it easier to reconcile working and family life (see, to that effect, *Meerts*, paragraph 47).
- 41 Lastly, when national legislation such as that at issue in the main proceedings grants workers, in accordance with clause 2.3(a) of the Framework Agreement, the opportunity of choosing between full-time and part-time parental leave and provides, by the putting in place of a specific award, for a system of penalties aimed at protecting workers against all unlawful dismissal during such leave, workers who have chosen to take part-time parental leave rather than full-time parental leave are not to be placed at a disadvantage, if the objective of flexibility of that Framework Agreement, as noted at paragraph 31 above, is not to be jeopardised.
- 42 Moreover, that interpretation of the Framework Agreement is supported, as the Belgian Government and the European Commission claim, by clause 2.6 of that Framework Agreement, which provides that rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are to be maintained as they stand until the end of parental leave.
- 43 As the Court has previously held, it is apparent from both the wording of that clause and its context that that provision is intended to avoid loss or reduction of rights derived from an employment relationship, acquired or being acquired, to which the worker is entitled when he starts parental leave, and to ensure that, at the end of that leave, with regard to those rights, he will find himself in the same situation as he was before the leave (*Meerts*, paragraph 39, and *Zentralbetriebsrat der Landeskrankenhäuser Tirols*, paragraph 51).
- 44 It is clear from the objectives of the Framework Agreement, recalled in paragraphs 30 to 32 above, that the concept of ‘[r]ights acquired or in the process of being acquired’ within the meaning of clause 2.6 of the Framework Agreement covers all the rights and benefits, whether in cash or in kind, derived directly or indirectly from the employment relationship, which the worker is entitled to claim from the employer at the date on which parental leave starts (see *Meerts*, paragraph 43, and *Zentralbetriebsrat der Landeskrankenhäuser Tirols*, paragraph 53).
- 45 Such rights and benefits include all those relating to employment conditions, like the right of a worker employed under a full-time contract of indefinite duration who is entitled to part-time parental leave to a fixed-sum protective award in the event of the employer’s unilateral termination of a contract without compelling or sufficient reason. That award, the amount of which is linked to



the salary related to that contract and the aim of which is to protect such a worker against dismissal on the grounds of an application for, or the taking of, parental leave, is paid to the worker by reason of his employment, which would have continued but for the unfair dismissal (see, by analogy, Case C-33/89 *Kowalska* [1990] ECR I-2591, paragraphs 10 and 11; Case C-167/97 *Seymour-Smith et Perez* [1999] ECR I-623, paragraphs 23 to 28; and *Meerts*, paragraph 44).

46 Accordingly, in the main proceedings, it is established that a worker such as Ms Rogiers, who, having worked for his employer under an employment contract for a specified period, was eligible, according to the rules laid down by national law, for parental leave, could rely on the right to a fixed-sum protective award provided for in Article 101 of the Law on financial stabilisation from the beginning of his parental leave. The fact that the worker possesses that right only if his employer later unlawfully dismisses him during his parental leave is irrelevant in that regard.

47 Consequently, when a worker employed under a full-time contract of indefinite duration has unlawfully been dismissed, as in the main proceedings, during part-time parental leave, a fixed-term protective award, such as that provided for by the Belgian legislation, must, in order to satisfy the requirements of the Framework Agreement, be determined on the basis of the full-time salary of that worker.

48 Having regard to the foregoing, the answer to the question is that on a proper construction of clause 2.4 of the Framework Agreement, which is set out in the annex to Directive 96/34, read in the light both of the objectives of that Framework Agreement and of clause 2.6 thereof, it is contrary to that provision for the fixed-sum protective award payable to a worker on part-time parental leave, where the employer unilaterally and without compelling or sufficient reason terminates that worker's full-time contract of indefinite duration, to be determined on the basis of the reduced salary earned by that worker at the date of the dismissal.

### Costs

49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

**On a proper construction of clause 2.4 of the framework agreement on parental leave concluded on 14 December 1995, which is set out in the annex to Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC as amended by Council Directive 97/75/EC of 15 December 1997 read in the light both of the objectives of that Framework Agreement and of clause 2.6 thereof, it is contrary to that provision for the fixed-sum protective award payable to a worker on part-time parental leave, where the employer unilaterally and without compelling or sufficient reason terminates that worker's full-time contract of indefinite duration, to be determined on the basis of the reduced salary earned by that worker at the date of the dismissal.**

[Signatures]

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\* Language of the case: Dutch.